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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,929	04/14/2006	Klaus Schultes	285437US0PCT	7074
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER REDDY, KARUNA P	
			ART UNIT	PAPER NUMBER
			1796	
			NOTIFICATION DATE	DELIVERY MODE
			10/12/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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## Office Action Summary

Application No.

10/575,929

Applicant(s)

SCHULTES ET AL.

Examiner

Karuna P. Reddy

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This office action is in response to the amendment filed on August 21, 2007.  
Claims 24, 27, 30, 33, 36-46 are amended; claims 1-23 are cancelled and new claim 47 is added. Claims 24-47 are currently pending in the application.
2. Amendment to specification in the bridging paragraph pages 1 and 2 is acknowledged.
3. Objection to claims 24 and 38 are moot in view of the amendments.

### ***Claim Rejections - 35 USC § 103***

4. The statutory statements from previous office action dated May 21, 2007 in paragraphs 5-6 are incorporated here in reference.
5. Claims 24-37, 39, 42-46 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Kress et al (US 4,895,898) in view of Suetterlin (US 4,513,118) and Lichtenstein et al (US 5, 621, 028).

The rejection is adequately set forth in paragraph 7 of the office action mailed May 21, 2007 and is incorporated here by reference.

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6. Claim 38 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Kress et al (US 4, 895, 898) in view of Suetterlin et al (US 4, 513, 118) and Lichtenstein et al (US 5, 621, 028) as applied to claims 24 and 30 above, and further in view of Suzuki et al (US 2002/0099135 A1).

The rejection is adequately set forth in paragraph 8 of the office action mailed May 21, 2007 and is incorporated here by reference.

7. Claim 40 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Kress et al (US 4, 895, 898) in view of Suetterlin et al (US 4, 513, 118) and Lichtenstein et al as applied to claim 30 above, and further in view of NieSsner et al (US 2001/0007890 A1).

The rejection is adequately set forth in paragraph 9 of the office action mailed May 21, 2007 and is incorporated here by reference.

8. Claim 41 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Kress et al (US 4,895,898) in view of Suetterlin (US 4,513,118) and Lichtenstein et al (US 5, 621, 028) as applied to claim 24 above, and further in view of Parker (US 5, 252, 667).

The rejection is adequately set forth in paragraph 10 of the office action mailed May 21, 2007 and is incorporated here by reference.

9. Claims 24, 26 and 47 (newly added) is rejected under 35 U.S.C. 103(a) as being unpatentable over Rhein et al (EP 0 691 351 A1) in view of Suetterlin et al (US 4,513,118) and Lichtenstein et al (US 5, 621, 028).

Rhein et al disclose thermoplastic acrylic moulding material obtained by polymerizing a mixture of MMA and lower alkyl acrylate. It enables the production of PMMA-based molding materials with improved properties, especially higher Vicat softening point (abstract). See example 1, wherein the Vicat softening temperature is 112<sup>0</sup>C.

Rhein et al is silent with respect to impact modifier based on crosslinked poly(meth)acrylates, plastics particles based on polymethyl methacrylate, polystyrene or polysilicones and the properties associated with test specimen.

However, Suetterlin et al teach an emulsion polymer, said polymer being useful as an impact strength modifying agent which, in admixture with a thermoplastic polymethyl methacrylate molding compound yields molded articles exhibiting reduced susceptibility to stress whitening and improved impact strength (abstract). Furthermore Lichtenstein et al teach polymethacrylate molded articles with polystyrene as light-scattering agent to render them translucent rather than transparent (column 1, lines 13-15). The polymer particles are spherical in shape having a diameter of 1-20  $\mu\text{m}$  and generally present in an amount of 0.05 to 10 wt% (column 3, lines 3-7). Therefore, it would have been obvious to add the impact modifier polymer of Suetterlin et al and

crosslinked polystyrene of Lichtenstein et al, to the molding material of Rhein et al for above mentioned advantages.

As to the properties recited, given that the composition comprises substantially similar components, one of ordinary skill in the art would have a reasonable basis to believe that the composition would exhibit similar properties. Since PTO cannot conduct experiments, the burden of proof is shifted to the applicants to establish an unobviousness difference. See *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977). Furthermore, when the claimed compositions are not novel they are not rendered patentable by recitation of properties, whether or not these properties are shown or suggested in the prior art. See *In re Spada*, 911 F. 2d 705, 709, 15 USPQ 1655, 1658 (Fed. Cir. 1990).

10. Claim 24, 26 and 47 (newly added) is rejected under 35 U.S.C. 103(a) as being unpatentable over Liebler et al (US 4, 680, 359) in view of Suetterlin et al (US 4,513,118) and Lichtenstein et al (US 5, 621, 028).

Liebler et al disclose copolymers adaptable for use as molding compositions and comprise (meth)acrylate monomers A, B and optionally C and D (abstract). The copolymers composed of components (A), (B) and optionally (C) and (D) will usually have a Vicat softening temperature above 90°C and preferably up to 120°C (column 3, lines 51-54).

Liebler et al is silent with respect to impact modifier based on crosslinked poly(meth)acrylates, plastics particles based on polymethyl methacrylate, polystyrene or polysilicones and the properties associated with test specimen.

The discussion with respect to Suetterlin et al and Lichtenstein et al in paragraph 9 above is incorporated herein by reference.

### ***Response to Arguments***

11. Applicant's arguments filed on August 21, 2007 in response to rejection of (a) claims 24-37, 39 and 42-46 under 35 U.S.C. 103(a) as being unpatentable over Kress et al (US 4, 895, 898) in view of Suetterlin (US 4, 513, 118) and Lichtenstein et al (US 5, 621, 028); (b) claim 38 under 35 U.S.C. 103(a) as being unpatentable over Kress et al (US 4, 895, 898) in view of Suetterlin (US 4, 513, 118) and Lichtenstein et al (US 5, 621, 028) and further in view of Suzuki et al (US 2002/0099135 A1); (c) claim 40 under 35 U.S.C. 103(a) as being unpatentable over Kress et al (US 4, 895, 898) in view of Suetterlin (US 4, 513, 118) and Lichtenstein et al (US 5, 621, 028) and further in view of NieSsner et al (US 2001/0007890 A1); and (d) claim 41 under 35 U.S.C. 103(a) as being unpatentable over Kress et al (US 4, 895, 898) in view of Suetterlin (US 4, 513, 118) and Lichtenstein et al (US 5, 621, 028) and further in view of Parker (US 5, 252, 667) have been fully considered but they are not persuasive.

In essence, applicant's arguments are based on interpreting component B and C of Kress et al as impact modifier and plastic particles, respectively. Such

arguments are really not responsive to the rejections since it is clearly mentioned there that Kress et al is silent with respect to impact modifier and plastics particles (see page 4, lines 21-22 of office action mailed 5/21/07). Rather, it is more appropriate to hold that the polymer matrix "a" of instant invention reads on components B, C and D of Kress et al. As to the composition containing thermoplastic polycarbonate, instant claims are open-ended and can comprise other components in addition to those recited in the instant claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karuna P. Reddy whose telephone number is (571) 272-6566.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jagannathan Vasu can be reached on (571)-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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